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FISCAL IMPACT STATEMENT

LS 7456 **NOTE PREPARED:** Jan 16, 2013
BILL NUMBER: SB 552 **BILL AMENDED:**

SUBJECT: Public Deposits.

FIRST AUTHOR: Sen. Holdman **BILL STATUS:** As Introduced
FIRST SPONSOR:

FUNDS AFFECTED: X **GENERAL** **IMPACT:** State & Local
X **DEDICATED**
FEDERAL

Summary of Legislation: This bill has the following provisions:

It allows the Board for Depositories to merge with a domestic nonprofit corporation if certain conditions are met, including the approval of a resolution of merger and conversion by the board of directors and voting members of the domestic nonprofit corporation.

It requires the surviving nonprofit corporation of the merger, known as the Public Deposit Insurance Corporation (PDIC), to deliver to the Secretary of State articles of merger that include certain information regarding the merger. It allows the Secretary of State to approve or disapprove the articles of merger.

The bill establishes the effect of the merger, including that the:
(1) surviving nonprofit corporation does not have the statutory rights, privileges, immunities, and powers and is not subject to the statutory duties, restrictions, penalties, and liabilities of the Board unless specifically expressed otherwise in law; and
(2) title to real property and other property owned by each party to the merger is vested in the surviving nonprofit corporation, including the Public Deposit Insurance Fund (PDIF) (which, under the management of the PDIC, is called the Corporation Insurance Fund (CIF)).

The bill requires the merging nonprofit corporation to comply with the laws relating to mergers of nonprofit corporations except for a provision that requires court approval or when the requirements are otherwise inconsistent with the provisions governing the merger with the Board.

It provides that all property in the CIF and all property otherwise held by the PDIC is exempt from all taxes imposed by the state or any political subdivision.

It establishes certain immunity for members of the board of directors and any officers, members, or employees of the PDIC.

The bill provides for the expiration of provisions that:

(1) create the Board; and

(2) establish the duties, restrictions, penalties, and liabilities regarding the Board and the management of the PDIF.

It allows the Secretary of State to file an affidavit with the Governor requesting that the Board continue administering the PDIF if the Board and a nonprofit corporation fail to merge by a certain date and requires the Governor, within 10 days, to issue an executive order that allows the Board to continue to administer the PDIF until a certain date.

It changes references from the "Board for Depositories" to the "Public Deposit Insurance Corporation". It also changes references from the "Public Deposit Insurance Fund" to the "Corporation Insurance Fund".

The bill makes other changes related to the expiration of the provisions regarding the Board.

It provides that interest earnings on the PDIF remain in the fund for the period July 1, 2013, through the expiration of the law establishing the Fund, and makes a General Fund appropriation to the Pension Distribution Fund in the amount equal to the interest earnings that would have been transferred from the PDIF to the Pension Distribution Fund.

The bill appropriates $50 M from the state General Fund to the Budget Agency to pay back the 2004 loan from the PDIF.

Effective Date: Upon passage; July 1, 2013.

Explanation of State Expenditures: *Summary:* The bill makes two appropriations from the state General Fund estimated to total approximately $51.1 M in FY 2014.

(1) The bill makes a $50 M appropriation to the State Budget Agency to repay a $50 M loan made from the Public Deposit Insurance Fund (PDIF) to the state General Fund in 2004.

(2) The bill makes an appropriation in an amount estimated at $1.1 M for a one-time payment to the Pension Distribution Fund in December 2013. This amount is to replace the payment that would otherwise have been made from the PDIF's interest earnings to the Pension Distribution Fund in December 2013. Thus, the last payment of interest earnings from the PDIF to the Pension Distribution Fund under the bill would be the December 2012 payment. No distributions will be made to the Pension Distribution Fund after December 2013.

Additionally, the merged corporation authorized under the bill will report to the Board of Finance, while the Board for Depositories currently reports biannually to the State Budget Committee. The change in oversight authority is expected to have minimal fiscal impact on both the Board of Finance and the State Budget Committee.

Background: State Pension Obligation: In 2008, the General Assembly assumed responsibility for the total amount of pension, disability, and survivor benefit payments from local police and firefighter plans established prior to 1977. Other funding sources for the Pension Relief Fund, which helps municipalities fund these obligations, include a dedicated portion of cigarette and liquor taxes, investment income on invested funds, and lottery revenue. In addition, the General Assembly appropriated $112 M to the Pension Relief Fund during state FY 2011 for the payment of pre-1977 pension, disability, and survivor benefits. If funds do not come from the PDIF, the General Assembly may appropriate funds from the state General Fund to meet its obligations. However, this bill makes only a single transfer in December 2013 from the state General Fund to the Pension Distribution Fund.

Pension Distribution Fund - Each year from 2001 through 2021, the interest less certain expenses of the Board and of the Indiana Education Savings Authority that were not paid by other sources, is transferred to the Pension Distribution Fund. The Auditor of State, from 2002 until 2022, distributes two equal installment payments from the Pension Distribution Fund to the Indiana Public Retirement System for deposit into the Pension Relief Fund to help municipalities meet their benefit payment obligations under the pre-1977 retirement plans. Distributions are prohibited if the balance of the PDIF is not sufficient to ensure the safekeeping and prompt payment of public funds.

From FY 2004 to FY 2012, the interest transfers net of expenses have been $7.8 M on average. However, in FY 2011 the transfer was $2.4 M, and in FY 2012 it was $0.5 M. Assuming the average of the recent fiscal years more closely represents the estimated payment on December 2013, the transfer is estimated to be approximately $1.1 M.

State General Fund - An interest-free loan to the state General Fund was issued in 2004, and the maturity date has been extended by both state statute and Board action to January 1, 2023. The value of the loan was $50 M on June 30, 2012. The bill appropriates state General Fund money to the State Budget Agency for the purposes of repaying the loan from the PDIF in one installment before July 15, 2013.

Explanation of State Revenues: A merger of the Board with a domestic nonprofit corporation under the bill will have indeterminate fiscal impact on the assessment of public depositories. The bill authorizes the payment of assessments to the Corporation Insurance Fund (CIF), but does not specify the assessment criteria, nor does it apply the existing criteria for determination of assessment rates to the new entity. The creation of the new entity will not affect an existing loan made to a state agency. However, a merger may affect the future investments, depending on the policies adopted by the new entity.

Further, the revenue and property of the CIF is not subject to state or local taxes. There is no fiscal impact as the result of this exemption because the property and interest or income of the PDIF and the Board are currently exempt from all taxes imposed by the state or any political subdivision.

Any change under the bill will only result from the decisions of the Board, the Secretary of State (SOS), and the votes of the board of directors and voting members of the domestic nonprofit corporation.

Background and Additional Information -

Merger: Under the bill, the Board will merge with a domestic nonprofit corporation. If the domestic nonprofit corporation's board of directors adopts a resolution, which then must be approved by the voting members of the corporation, a plan for merger will result. The plan for merger, which may include amendments of the corporation's articles of incorporation and bylaws, is to be delivered to the SOS. If the SOS approves the articles of merger, it is proof that all conditions of the merger have been satisfied and the effective date of the merger is the date specified in the plan.

Domestic Nonprofit Corporation: The domestic nonprofit corporation with which the Board may merge must have the following eight board of director members.

(1) The Treasurer of State.
(2) The Director of Department of Financial Institutions.
(3) A treasurer of an Indiana county.
(4) A city or town official responsible for tax proceed investment.
(5) An appointee of the Indiana Association of School Business Officials.
(6) An officer of a financial institution operating in Indiana with at least $200 M of Indiana-based deposits.
(7) An officer of a financial institution operating in Indiana with between $200 M and $1.0 B of Indiana-based deposits.
(8) An officer of a financial institution operating in Indiana with more than $1.0 B of Indiana-based deposits.

The Board of Depositories: The Board is an independent body politic and corporate, constituting an instrumentality of the state and for a public purpose. The Board provides safekeeping and prompt payment of public funds that are not covered by the Federal Deposit Insurance Corporation. The members of the Board include the Governor, the Treasurer of State (who is the Secretary-Investment Manager of the Board), the Auditor of State, the Chairperson of the Department of Financial Institutions, the Chief Examiner of the State Board of Accounts, and four appointed members from depository institutions. (Within certain parameters, the Governor appoints two members, and the President Pro Tempore and the Speaker of the House each appoint one member).

The Public Deposit Insurance Corporation: The PDIC will be the surviving entity of the merger of the Board and the domestic nonprofit corporation. It is to be governed by the articles of incorporation and bylaws of the domestic nonprofit corporation, which may have been amended in the merger plan submitted to the SOS for approval.

The Public Deposit Insurance Fund: The PDIF is funded by assessments payable by every depository that has public funds, although the Board may waive assessments if, in its discretion, it determines that the assets of the PDIF are equal to the reserve for losses. At the present time, the Board has waived the assessments.

Assets - The total assets of the PDIF were $300 M on November 30, 2012. The balance was down by $469,000 from the total assets presented in financial statements on June 30, 2012.

Assessments - The Board determines and fixes the fair and reasonable assessment rate based on the public funds currently on deposit, the liabilities of the PDIF, and the determination of the Board on the amount of reserve losses. The maximum assessment rate is 2%. The FY 2010, FY 2011, and FY 2012 financial statements of the PDIF do not include any revenue from assessments.

Revenue - The PDIF received revenue from investment income and securities lending income of $985,770 in FY 2011 and of $703,169 in FY 2012.

Investments - Under current law, the Board is authorized to invest, reinvest, and exchange investments in excess of the cash working balance. In addition to bonds, notes, certificates, and other securities of the federal government, the Board may invest in bonds, notes, certificates, and other valid obligations of Indiana political subdivisions, bonds and other obligations of the Indiana Finance Authority (IFA), guarantees of industrial development obligations or credit enhancement obligations (subject to certain limitations), other instruments issued by IFA or a county, city, or town concerning industrial development, and bonds and other obligations of the Indiana Housing and Community Development Authority.

The Corporation Insurance Fund: Under the bill, the CIF will be maintained by the assessment of the public fund depositories, the collection of claims, and by the receipt of all interest and other earnings. The amount of the assessment is not specified, and the existing statute concerning the assessment will not apply. Similarly, the investment policy of the CIF and PDIC is not specified or applied under the bill.

The CIF will continue to pay claims in the manner currently in state statute. Additionally, the CIF will continue to hold until maturity bonds issued by the Indiana Housing Finance Authority. The bonds issued by the Indiana Housing Finance Authority in 1989 do not bear interest, and the investment was valued at $4,993,800 on June 30, 2012. The bonds mature on February 15, 2013.

Explanation of Local Expenditures:

Explanation of Local Revenues: The bill would end payments from the PDIF to the Pension Distribution Fund beginning January 2014. The December 2013 payment will be made from the state General Fund. It is assumed that all payments for the pension, disability, and survivor benefits of the local police and firefighter plans established prior to 1977 would be made from the Pension Relief Fund.

State Agencies Affected: Board for Depositories; Board of Finance; State Budget Committee.

Local Agencies Affected: Pension Relief Fund.

Information Sources: Auditor of State, *2012 Comprehensive Annual Financial Report*, accessed at http://www.in.gov/auditor/2530.htm; *Indiana Board for Depositories Financial Statements*, Years Ended June 30, 2012 and 2011 and Years Ended June 30, 2011 and 2010; Indiana Board for Depositories, *Semi-Annual Report to the State Budget Committee*, December 4, 2012 and June 4, 2012 accessed at http://www.in.gov/tos/deposit/2374.htm; LSA, *Indiana Pension Handbook*, accessed at http://www.in.gov/legislative/2396.htm.

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